

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA

V.

HARVE CHRISTOPHER BOYD

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A-13-CR-165(01) LY

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

TO: THE HONORABLE LEE YEAKEL
UNITED STATES DISTRICT JUDGE

The Magistrate Court submits this Report and Recommendation to the District Court pursuant to 28 U.S.C. § 636(b)(3). The District Court referred this case to the United States Magistrate Judge for the taking of the defendant's felony guilty plea and for his allocution pursuant to Federal Rule of Criminal Procedure 11.

On May 9, 2013, the defendant and counsel appeared before the Magistrate Court. The undersigned addressed the defendant personally in open court, informed him of the admonishments under Rule 11 of the Federal Rules of Criminal Procedure, and determined that he understood those admonishments.

Pursuant to a plea agreement, the defendant plead guilty to a single count superseding information charging him with possession with intent to distribute a mixture or substance containing a detectable amount of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C).

The Magistrate Judge finds the following:

1. The defendant, with the advice of his attorney, consented to enter this guilty plea before the Magistrate Judge, subject to final approval and sentencing by the District Judge;
2. The defendant fully understands the nature of the charge against him and possible penalties;
3. The defendant understands his constitutional and statutory rights, understands that his

constitutional and statutory rights can be waived, and understands the meaning and effect of the waiver of his constitutional and statutory rights;

4. The defendant waived his right to appeal except in a case in which the sentence imposed is greater than the maximum sentence authorized by statute and in a case where the sentence is above the applicable sentencing guideline range and waived his right to challenge his conviction or sentence under 28 U.S.C. §§ 2241 and 2255. The defendant did not waive the right to raise a challenge based on ineffective assistance of counsel and prosecutorial misconduct;
5. The defendant's plea was made freely and voluntarily;
6. The defendant is competent to enter this plea of guilty; and
7. There is a factual basis for this plea.

RECOMMENDATION

The Magistrate Court **RECOMMENDS** the District Court accept the defendant's guilty plea and, after reviewing the presentence investigation report, enter a Final Judgment of guilt against him.

WARNING

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. See *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained within this Report within fourteen (14) days after being served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations and, except upon grounds of plain error, shall bar the party from appellate review

of proposed factual findings and legal conclusions accepted by the District Court to which no objections were filed. See 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED on May 9, 2013.



MARK LANE
UNITED STATES MAGISTRATE JUDGE